

#### REMARKS

In the outstanding Official Action, claims 1-8 were rejected under 35 USC 112 as being indefinite. In particular, the use of the phrase "in particular" in claims 1 and 8 and the use of the word "coating" in parenthesis in claims 4 and 5 was deemed to render the claims indefinite.

In response, and in order to place the instant application in better condition for allowance, claim 8 is herewith cancelled, without prejudice, and claims 1, 4 and 5 are herewith amended to correct the noted points of indefiniteness and thereby obviate the Section 112 rejection. It is respectfully submitted that the currently-pending claims, as herewith amended, now fully comply with the requirements of Section 112.

On the merits, claims 1-7 were rejected under 35 USC 103(a) as being unpatentable over Swanson in view of Bouma and Sharp, for the reasons of record. Additionally, claims 8 and 9 were rejected under Section 102 but these rejections have been rendered moot by the cancellation of these claims, and accordingly these rejections will not be discussed further herein.

In the outstanding rejection of claims 1-7, it was admitted that Swanson does not expressly teach the wavelength to be used,

but it is suggested that this admitted deficiency is overcome by Bouma, which shows optical coherence tomography imaging at 1.81  $\mu\text{m}$ .

More particularly, however, a careful reading of the Bouma reference will reveal that the teachings of Bouma regarding emission wavelength, read in their entirety and absent the benefit of impermissible hindsight derived from the instant disclosure, neither show nor suggest this feature of the instant invention as now more precisely claimed. More specifically, Bouma admits that "the detailed scattering and absorption properties of human tissues in the 1-to 2- $\mu\text{m}$  spectral range are not known". Bouma further notes that equivalent results (namely equivalent depths of penetration) were achieved using wavelengths of 1.3  $\mu\text{m}$ , 1.55  $\mu\text{m}$  and 1.8  $\mu\text{m}$ . Thus, one of ordinary skill in the art seeking to apply the teachings of Bouma to Swanson, absent the benefit of impermissible hindsight, would be more likely than not to select a wavelength outside the optimum wavelength as disclosed and claimed in the instant application, particularly since two of the three wavelengths used by Bouma are in fact outside this range.

In view of the foregoing amendments and remarks, it is respectfully submitted that independent claim 1, as herewith amended, and the remaining claims depending therefrom, are clearly patentably distinguishable over the cited and applied art.

Accordingly, allowance of the instant application is respectfully submitted to be justified at the present time, and favorable consideration is earnestly solicited.

Respectfully submitted,

By 

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